



S/N 09/060,047

PATENTIN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Richard L. Dunn
Serial No.: 09/060,047
Filed: April 14, 1998
Title: EMULSIONS FOR IN-SITU DELIVERY SYSTEM

Examiner: Edward J. Webman
Group Art Unit:
Docket: 1195.157US1

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RESPONSE

Commissioner for Patents
Washington, D.C. 20231

This is a response to the Communication mailed April 25, 2001.

According to the Communication, Applicants' Amendment and Response filed February 12, 2001 is non-responsive. The Examiner states that in Applicants' February 12th Amendment, Applicants submitted claims designating an aqueous carrier but in their election of species filed January 7, 1999, Applicants elected a non-aqueous carrier. Consequently, Applicants are said to have submitted claims outside the scope of their election of species.

Applicants are having difficulty with the record regarding the restriction requirement. Specifically, Applicants are unable to determine the status of the requirement for a species election. A brief review may help.

On Sept. 24, 1999, the Examiner issued a restriction requirement with a multiple election of species. On October 20, 1999, Applicants responded to the restriction requirement but inadvertently omitted an election of species. On Dec 30, 1999, the Examiner issued a communication asking for that election of species. On January 7, 2000, Applicants made a species election. On April 10, 2000, the Examiner issued a further communication indicating that Applicants' species election required three additional designations. On May 2, 2000, Applicants made those elections but traversed the election of species 1 and 3. Applicants provided explanation for that traverse. In the Office Action of August 8, 2000, the Examiner recapped Applicants' traverse and withdrew the species election requirement. See page 2, 2nd ¶ of the August 8th Office Action. In their response of February 7, 2001, Applicants discussed the Examiner's recap and pointed out where the recap did not accurately characterize Applicants' explanation for their traverse. Applicants also understood the record as of February 7th to be that no requirement for a species election existed. Consequently, Applicants believed their earlier

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designations of species to be moot. In view of the mootness, Applicants proceeded with their choice of an aqueous carrier.

Applicants wish to follow the Examiner's requests in this case but are confused. If the Examiner decides to reinstate a requirement for a species election and requests a choice between aqueous and non-aqueous, Applicants wish to choose aqueous. As it stands at present, however, the Examiner apparently has withdrawn the requirement for a species election.

CONCLUSION

Reconsideration of the determination of non-responsiveness is respectfully requested.

Respectfully submitted,

RICHARD L. DUNN

By their Representatives,

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Date May 9, 2001

By A. James Nelson
A. James Nelson
Reg. No. 28,650

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, Washington, D.C. 20231, on this 9th day of May, 2001.

Name Dawn M. Poole

Signature Dawn M. Poole